IBRAHIM S/O IDRUS v. LEE YU MEI

[A.C.J. (Abdul Razak J.) July 7, 1981]

[Seremban – Civil Appeal No. 9 of 1980]

Landlord & Tenant – T.O.L. Land – Order for vacant possession – Whether respondent had locus standi to bring action – Land reverted to State Government.

This was an appeal against the decision of the learned Magistrate ordering the appellant to give up vacant possession of premises No. 21 Simpang Pertang, Jelebu to the respondent. The land in dispute was held under a Temporary Occupation Licence. The previous holder of the land was the respondent's husband who during his lifetime had entered into an agreement with the appellant to allow him occupy the land for a period of 12 years to expire in March 1976. The occupation continued during and after the respondent became the registered licensee in 1968. In August 1975, however, the respondent sent a notice to the appellant to vacate the premises but the appellant refused. In the present action to obtain vacant possession of the premises, the appellant raised the ground of appeal which he strenuously relied upon viz. that at the time the Magistrate made the order, the Temporary Occupation Licence had already expired.

Held, dismissing the appeal: the T.O.L., under the circumstances, must be deemed to be in force at the time when the order was made because the respondent could have applied to the Land Office to renew the T.O.L. or she could have caveated the land. In the present case, she could not do either because the T.O.L. was held by the court as an exhibit. An assurance had given by the Assistant District Officer that it would be renewed and back-dated. Accordingly, it would be unjust to deprive the respondent of the fruits of the judgment merely because of the action of others for which she could not be held responsible.

CIVIL APPEAL.

A.K.J. D'Cruz for the appellant.

Nirmala Devi Selvarajah for the respondent.

Cur. Adv. Vult.

Abdul Razak J.: This is an appeal against the decision of the learned Magistrate wherein she made an order that the appellant gave up his vacant possession of premises No. 21 Simpang Pertang, Jelebu to the respondent together with an order to pay double rent at $80 per month from the date of filing the action that is April, 1976 until delivery of vacant possession.

The land the subject matter of the dispute was held under a Temporary Occupation Licence. The respondent had been the registered licensee since 1968. There was no dispute regarding this. The previous holder was her husband who died in 1966. During the deceased's lifetime he had entered into an agreement with the appellant to occupy the land for a period of twelve years to expire in March, 1976. The occupation continued during and after the respondent became the registered licensee in 1968. In August, 1975 however, the respondent sent a notice to the appellant to vacate the premises to take effect before March 6, 1976 when the contract was due to expire but the appellant had refused. The appellant in his defence said that the respondent had no *locus standi* because the agreement was not made with her but with her husband. In the alternative he said the land had reverted to the State Government on the deceased's death; in the further alternative he said he was protected by the Control of Rent Act, 1966. At the time of the appeal apparently none of these matters pleaded were strenuously relied upon by the appellant. I think he had good reasons for doing so. It was obvious that as far as the *locus standi* was concerned, the matter did not arise because whether there was an agreement or not the respondent was already a registered licensee in her own right at the time the notice to vacate was issued by her. As counsel had rightly put it she was yet to be the legal representative of her husband's estate; she was therefore not bound by the agreement. On the question of whether the land had reverted to the State the latter could hardly have done so because they had clothed her with the necessary authority to sit on it by renewing the T.O.L. in 1968. In regard to the Control of Rent Act, 1966 counsel rightly conceded that it did not apply to the appellant. It seems therefore that without those grounds in the pleadings there was clearly no basis on which the appeal could have proceeded. The appellant however raised one ground in his appeal which arose at the trial itself. The Magistrate he said could not have made the order which she did because at the time when she made it the T.O.L. had already expired. There was no basis therefore on which she could make the order. This was not disputed but it also had transpired that the T.O.L. had been tendered as an exhibit. It was also in evidence that the Assistant District Officer at the relevant District Office had in giving evidence assured the court that the T.O.L. would be renewed by the Land Office and back-dated since this would be a matter of course. He said the T.O.L. would expire at the end of 1979. The record showed that the relevant date of trial was December 14, 1979. It showed that when he gave the assurance the life of the licence had still two weeks or more to expire. As far as the lower court was concerned it seemed to have acted correctly in stating that since it was asked to determine whether the respondent's notice to vacate had effect that for the purpose of making her judgment that only the date of the notice was

relevant. However as far as the order to enforce her judgment was concerned, I think it is only fair to say that the Appeal Court must proceed on the equitable principle that equity looks on that as done which ought to be done and will not suffer a wrong to be without a remedy. The respondent in this case could have applied to the Land Office to renew the T.O.L. or she could have asked to caveat the land but she had not apparently so done clearly it seems to me for one of two reasons, either because the T.O.L. was held by the court as an exhibit or because of the assurance given by the Assistant District Officer that it would be renewed and back-dated. In either case it seems to me to be quite unfair and unjust that the respondent should now be deprived of the fruits of her judgment merely because of the action of others for which she would not be held responsible or at least where she was entitled to issue would be acted in her favour. Under the circumstances I hold the T.O.L. must be deemed to be in force at the time when the order was made. In the result the learned Magistrate was right in making the order which she did except that since the respondent had only asked for an order for double rent from the date of the order, it will be so ordered; save otherwise I would therefore dismiss the appeal with costs.

The parties would however be at liberty to apply to this court for any consequential relief arising from the decision of this appeal.

Appeal dismissed.

Solicitors: *A.K.J. D'Cruz & Co.; Sri Selvarajah & Nirmala.*

TRENGGANU BUS CO. SDN. BHD. v. TRANSPORT WORKERS UNION

[O.C.J. (Hashim Yeop A. Sani J.) October 23, 1981]

[Kuala Lumpur – Originating Motion No. 42 of 1981]

Administrative Law – Certiorari – Award of Industrial Court interpreting previous award – Application to refer questions of law to the High Court refused – Application for certiorari to quash award – Whether award valid and binding after expiry date until superseded by another award or collective agreement – Industrial Relations Act, 1967, ss. 33 and 33A.

Industrial Law – Award of Industrial Court interpreting previous award – Application to refer questions of law to High Court refused – Whether application can be made to quash award – Whether award valid and binding after expiry date until superseded by another award or collective agreement – Industrial Relations Act, 1967, ss. 33 & 33A.

In this case the Industrial Court had made an award on a reference between the parties. Subsequently a joint application was made for the interpretation of the award. There were two areas of dispute, one on the interpretation of a clause of the original award, and the second whether the original award continued to have force and effect after its expiry date. The Industrial Court made its award directing payment to certain workers and also that the payments should be made to the workers until the date when the new collective agreement became effective. The applicant applied for the award to be referred to the High Court on a question of law but this was refused. The applicant then applied for an order of certiorari to quash the award of the Industrial Court.

Held: (1) according to the scheme of the Industrial Relations Act some finality must be read into the power of the Industrial Court to interpret its own award and the party should not be allowed to seek the aid of the High Court to quash the order under section 33 of the Act;

(2) in this case the Industrial Court was right in following the precedent and ruling that the award continued in force until superseded by a new award or a collective agreement.

Cases referred to:

(1) *New Zealand Waterside Workers Industrial Union of Workers* v. *Deputy Judge Dalglish and Members of the Waterfront Industry Authority* [1949] N.Z.L.R. 783.

(2) *L. Stanley* v. *G.B. Bull* [1952] M.L.J. 65.

The following case was also referred to in argument: *National Union of Commercial Workers* v. *Societe des Matcres Premieres Tropicales* Award 97/80 in I.C. Case No. 142 of 1980; 1980 Survey of Malaysian Law, p. 322.

CIVIL SUIT.

D. Xavier for the applicant.

K. Chandra for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani (delivering Oral Judgment): The applicant company is unhappy about Industrial Court award No. 147/80. This award was handed down on December 10, 1980 as a result of a joint application by the parties under section 33(1) of the Industrial Relations Act, 1967.

Under section 33 of the Industrial Relations Act 1967, the Industrial Court may vary any terms of an award if it considers it *desirable to do so*, but the variation however, must be *solely* for the purpose of removing any ambiguity or uncer-